

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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PATRICIA G. BARNES,

Plaintiff,

v.

ANDREW SAUL, Commissioner of  
Social Security,

Defendant.

Case No. 3:18-cv-00199-MMD-WGC

## ORDER

The Court previously granted then Defendant Nancy Berryhill's<sup>1</sup> motion to dismiss (ECF No. 87) and dismissed Plaintiff Patricia Barnes's claims with prejudice. (ECF No. 142 ("Order").) The Court entered judgment accordingly. (ECF No. 143.) Plaintiff appealed the Order. (ECF No. 156.) The Ninth Circuit Court of Appeals affirmed in part, and reversed in part, this Court's Order dismissing Plaintiff's complaint for failure to state a claim and remanded for further proceedings. (ECF No. 159.)

Accordingly, this Court's Order granting Defendant's motion to dismiss and the judgment entered (ECF Nos. 142, 143) are vacated with respect to Plaintiff's claim of disparate-impact age discrimination under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* ("ADEA"). This claim will proceed as alleged in Plaintiff's second amended complaint (ECF No. 86), which is the operative complaint.

It is therefore ordered that Defendant Andrew Saul will have 30 days from the date of entry of this order to respond.


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<sup>1</sup>Plaintiff asserts claims against Nancy Berryhill in her official capacity as the Acting Commissioner of Social Security. However, Andrew Saul is the current Commissioner and is thus the proper Defendant. See Fed. R. Civ. P. 25(d) ("An action does not abate when a public officer who is a party in an official capacity . . . ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.")

1 It is further ordered that the parties file a joint status report within 15 days from the  
2 date of entry of this order.

3 The Clerk of Court is directed to substitute Nancy Berryhill with Andrew Saul  
4 pursuant to Fed. R. Civ. P. 25(d).

5 DATED THIS 4<sup>th</sup> Day of March 2021.

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8 MIRANDA M. DU  
9 CHIEF UNITED STATES DISTRICT JUDGE  
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